SUPREME COURT OF THE UNITED STATES.

No. 397.

G. MUNZENMAINER, PLAINTIFF IN ERROR,

vs.

THE STATE OF IOWA.

ON APPEAL TO THE SUPREME COURT OF THE STATE OF IOWA.

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1 Pleas and proceedings before the district court of Polk county, Iowa, at the January, 1866, term, begun and held at regular term thereof on the 8th day of January, 1866, the Hon. Charles C. Nourse, judge of the fifth judicial district court, presiding.

STATE OF IOWA
vs.
G. MUNZENMAIER.

2 Be it remembered, that heretofore, to wit, on the 27th day of July, A. D. 1865, there was filed in the office of the clerk of the district court for said county an indictment in words and figures following, to wit:

Indictment for keeping a nuisance.

STATE OF IOWA
vs.
G. MUNZENMAIER.

The grand jury of the county of Polk, in the State of Iowa, being legally impanelled in the name and by the authority of the State of Iowa, accuse G. Munzenmaier of the crime of keeping a nuisance, committed as follows:

The said G. Munzenmaier, on the first day of April, A. D. 1865, and on each and every day from that time until the finding of this indictment, in the city of Des Moines, in the county of Polk and State aforesaid, did wilfully and unlawfully establish, continue, and use a building and place for the purpose and with the intent
3 of keeping, owning, and selling intoxicating liquors within the State of Iowa, contrary to law; and then and there did sell gin, rum, brandy, and whiskey contrary to law, to the great annoyance and common nuisance of all the good people of said county of Polk, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Iowa.

H. W. MAXWELL,
Dist. Att'y of the 5th Judicial Dist., Iowa.

Filing of indictment.

The within indictment was presented to the district court of Polk county, Iowa, in open court, by the foreman of the grand jury, in the presence of all the grand jurors, and filed by the clerk of said court this 27th day of July, 1865.

H. H. GRIFFITHS,
Clerk of Dist. Court Polk Co., Iowa.

Order for warrant.

I hereby order a bench-warrant to issue forthwith on the within indictment for the arrest of said defendant, and his bail is fixed at three hundred dollars.

W. LOUGHRIDGE, *Judge.*

4 And afterwards, to wit, on the 1st day of August, 1865, there was filed in the office of said clerk a plea of not guilty, with reservations, in words and figures following, to wit:

Plea of not guilty.

STATE OF IOWA
vs.
G. MUNZENMAIER.

Now comes the defendant and pleads not guilty, expressly, however, saving and reserving the right to withdraw this plea and attack the indictment herein by demurrer or motion to set aside, if upon examination the same shall be deemed defective and open to objection.

FINCH & ELLWOOD,
For Def't.

And afterwards, to wit, on the 8th day of August, A. D. 1865, there was filed in the office of said clerk a motion for continuance, in words and figures following, to wit:

5

STATE OF IOWA
vs.
G. MUNZENMAIER.

STATE OF IOWA, *Polk County, ss:*

I, Gotlieb Munzenmaier, of said county, being duly sworn, do depose and say:

That I am the defendant in the above-entitled action; that I, as defendant herein, am indicted for a nuisance under the 8th section of the act of the general assembly of the State of Iowa, entitled "An act for the suppression of intemperance," which took effect July 1st, 1855; that the indictment against me herein was found at the present term of this court, and that I was arrested and arraigned on a bench warrant some four or five days since, and a day or two after the indictment was filed. And I do further depose and say that I was not in custody or on bail, nor had I deposited money instead of bail when this indictment was found against me, nor had I prior to the

6 present term been arrested and held to bail for the said offence.

And I do further depose and say that the actions, criminal, ordinary, and equitable, triable at the present July term of this court were duly arranged upon the calendar or docket prepared by the

clerk of this court, as provided and required by section 3,005 of the revision of 1860, in the order therein specified; that the court at this term proceeded to try and dispose of the said causes so arranged in their order, and tried, continued, and disposed of all the criminal cases on said docket, as required by section 3,006, with the exception of two or three cases, which, by consent and direction of the court, were set down for trial at a subsequent day of the term; that after the court had so disposed of the causes set down on the said calendar, prepared by the said clerk as criminal causes as aforesaid,
the court entered upon the trial of the civil docket or calen-
7 dar, and tried and disposed of several jury causes, and received several verdicts, and entered judgments thereon.

And I do further depose and say that I have, as I verily believe, a good and substantial defence to this action on the merits; that I have testimony material to my successful defense on the trial thereof, which I have not been, and am not now, able to procure at this term of this court; that acting upon the statements and advice of my counsel herein that this cause could not be tried at this term of this court, unless I desired a trial thereof, I have made no preparations for this trial, and am utterly unprepared to try this cause at this term of this court, but desire a continuance of the same in order to enable me to prepare for the trial of the same; and I hereby offer good and ample security for my appearance to answer to the indictment herein at the next term of this court, at which time I expect to be prepared for the trial hereof.

8 Therefore, for the reasons appearing in this affidavit, I respectfully ask for a continuance of this action until the next term of this court, relying on the facts above stated, and the provisions of sections 3,005, 3,006, 4,723, and 4,725.

G. MUNZENMAIER.

Subscribed and sworn to by G. Munzenmaier before me, this 8th day of August, 1865.

[SEAL.] A. MORRIS,
Notary Public, Polk Co., Iowa.

And afterwards, to wit, on the 8th day of January, A. D. 1866, there was filed in the office of said clerk a notice to introduce witnesses, in words and figures following, to wit:

Notice to introduce witnesses.

STATE OF IOWA }
vs. }
G. MUNZENMAIER. }

The above-named defendant, G. Munzenmaier, is hereby notified that on the trial of the above-entitled cause the plaintiff, the State of Iowa, will introduce in support of the indictment the fol-
9 lowing named witnesses, to wit:

1st. Samuel Noel; residence, Des Moines, Polk county, Iowa; occupation, city marshal.

2d. Alexander Patterson; residence, Des Moines, Polk co., Iowa; by occupation a clerk.

3d. S. H. Turner; residence, Des Moines, Polk co., Iowa; by occupation, an attorney.

4th. W. A. Hunt; residence, Des Moines, Polk Co., Iowa; occupation, constable.

5th. Townsend Hall; residence, Des Moines, Polk Co., Iowa; occupation, laborer.

All of whom are expected to testify that the defendant, G. Munzenmaier, in Des Moines, in said county, on the 1st day of April, 1865, and prior thereto, within three years, and subsequently thereto, until the 27th day of July, 1865, did establish, continue, and use a building for the purpose of selling intoxicating liquors therein contrary to law, and did therein during the said time sell intoxicating liquors contrary to law.

H. W. MAXWELL,
Dist. Att'y, 5th Judicial District, Iowa.

10 Received the within notice on the 4th day of January, 1866, and on the 5th day of January I served the same on the within named defendant, G. Munzenmaier, by reading to and delivering him a true copy of the same at Des Moines, Polk county, Iowa.

N. McCALLA,
Sheriff Polk Co., Iowa.

And afterwards, to wit, on the 12th day of January, 1866, the same being the 5th day of January term of said court, the following proceedings were had:

Jury impanelled.

STATE OF IOWA
vs. } 162. Crim.
G. MUNZENMAIER.

Now on this day this cause came on to be heard, the plaintiff appearing, by his attorney, the Hon. H. W. Maxwell, dist. attorney, and the defendant, by his attorney, Phillips & Phillips, and then came a jury of twelve good and lawful men, to wit: Thomas Gill,
11 David Harris, J. J. Fox, Aaron Brown, Alfred Harris, John Witner, Henry Hall, R. C. McMillen, James Zook, Edward Vaughn, A. W. Reed, and George Bogenwright, who being duly sworn to well and truly try the issues in this cause, and after hearing the evidence, the argument of counsel, and the instructions of the court, retired in charge of a sworn bailiff to consider of their verdict, and after a time spent in deliberation, returned into court with the following verdict, to wit: "The jury find the defendant guilty as charged in the indiciment," when said jury was discharged.

And afterwards, to wit, on the 15th day of January, 1866, the same being the 7th day of the January term of said court the following proceedings were had, to wit:

Notice of mo. for new trial and ruling.

STATE OF IOWA
vs.
G. MUNZENMAIER. } 162 crim.

Now comes Phillips & Phillipps, attorneys for defendant,
12 and file a motion in arrest of judgment, and for a new trial, which is overruled by the court, to which the defendant excepts, and files a bill of exceptions duly settled and signed by the court.

And afterwards, to wit, on the same day there was filed in the office of said clerk a bill of exceptions in the words and figures following, to wit:

Dist. court of Polk co., Iowa.

STATE OF IOWA
vs.
G. MUNZENMAIER.

Be it remembered that the State on the trial of this cause claimed that the liquors sold and kept for sale, and the nuisance complained of, was so done, and the offence occurred in the city of Des Moines, Polk county, Iowa, and that no other liquors was claimed to have been sold or kept for sale by defendant in said county of Polk than those so kept and sold by defendant in the city of Des Moines, and that after the State had rested its case the defendant offered
13 to give in evidence to the jury on the trial of the case on his behalf a license from the United States, issued to him as a retail liquor dealer in the words and figures following, to wit:

U. S. license.—No. 115.

United States internal revenue license, in force from May, 1865, *expires May 1st*, 1866.

To all whom it may concern:

This license is granted to G. Munzenmaier, of the city of Des Moines, in the county of Polk, and State of Iowa, to carry on the business or occupation of retail liquor dealer at No.—— street, in the aforementioned place, he having paid the tax of twenty-five dollars therefor conformably to the provisions of the excise laws of the United States.

This license to be in force until the 1st day of May, A. D. 1866, provided the holder thereof shall conform to the requirements of said laws as are or may hereafter be in force in this behalf enacted.

Given under my hand and seal at Des Moines, this 7th day
14 of September, A. D. 1865.

[SEAL] S HAINES,
Collector of the 5th Collection District in the State of Iowa.
A. BOWERS, *Dep.*

And also offered to show that he had complied with all the laws of the United States touching the subject of the said license; that the court refused to permit the defendant to give said evidence to the jury, or any part thereof, to which ruling of the court, and refusal to permit defendant to give such evidence to the jury in his behalf on such trial, the defendant then and there excepted.

And that thereupon the court upon its own motion gave to the jury the following in the words and figures following, to wit:

STATE OF IOWA
vs.
G. MUNSENMAIER. } Nuisance.

15 Defendant is charged with establishing and keeping a place for the sale of intoxicating liquors in violation of law, and keeping liquors for sale thereon contrary to law.

Proof of the selling contrary to law within the time named, and the date of the finding of the indictment is presumptive evidence, of the offence, and if you find from the evidence that defendant sold intoxicating liquors contrary to law within the times aforesaid, at the place charged, it is sufficient to charge defendant, unless such evidence is rebutted.

Defendant must be proved guilty, beyond a reasonable doubt, otherwise you will acquit him.

C. C. NOURSE, *Judge.*

That the foregoing is all the instructions given to the jury in the trial of the cause, and that to the giving of each and every of the said instructions the defendant then and there excepted at the time.

16 And be it further remembered, that after the jury returned into court their verdict, and before judgment thereon, the defendant filed therein his motion in arrest of judgment, and for a new trial, in the words and figures following, to wit:

Motion for new trial.

STATE OF IOWA
vs.
G. MUNSENMAIER. } January term, 1866.

Comes now the defendant, and moves the court in arrest of judgment, and for a new trial herein, and as cause of such motion shows the following:

I. The verdict of the jury is contrary to law, and is not supported by the evidence.

II. The court erred in refusing to permit the defendant to give the evidence to the jury offered by him in his behalf on the trial of this cause.

III. The court erred in giving the instructions to the jury given upon its own motion.

IV. The law under which the said indictment is found, and upon which it is based, is unconstitutional, and is in conflict with the Con-

stitution of the United States and acts of Congress, and in
17 conflict with the constitution of the State of Iowa, and is void.

PHILLIPS & PHILLIPS,
Att'ys for Def't.

That the court, after hearing said motion, overruled the same, to which action of the court, in overruling said motion, the defendant then and there excepted, and he asks that this his bill of exceptions be signed, and the foregoing facts be made a part of the record in this cause, and it is so ordered by the court.

CHARLES C. NOURSE, *Judge*.

And afterwards, to wit, on the 18th day of January, 1866, the same being the 10th day of the January term of said court, the following proceedings were had:

Judgment.

STATE OF IOWA
vs.
G. MUNZENMAIER. } 162 crim.

Now on this day this cause comes on to be heard, and for
18 final sentence, and the defendant being personally present in open court, and the court having inspected the indictment, the verdict of the jury, and all the pleadings herein, doth find that the defendant, G. Munzenmaier, is guilty, as charged in the indictment, and doth fine him in the sum of five hundred dollars, ($500,) and the costs of this action, and to stand committed until the same is paid.

It is therefore ordered and adjudged by the court that the plaintiff have and recover of the defendant the sum of five hundred dollars, and the costs of this suit, taxed at forty-nine dollars and twenty cents, ($49 20,) and that execution issue therefor.

Signed by C. C. Nourse at the end of the day's proceedings.

And afterwards, to wit, on the 19th day of January, 1866, an appeal bond was filed in the office of said clerk, in words and figures following, to wit:

Bond for appeal.

19 Whereas an indictment was found at the July term of Polk co., Iowa, accusing G. Munzenmaier of keeping a nuisance in the city of Des Moines, Iowa.

And whereas at the January term of said district court the said G. Munzenmaier was tried and found guilty as charged in the said indictment, and said G. Munzenmaier was adjudged to pay a fine of five hundred dollars, and to stand committed until the same was paid.

And whereas the said G. Munzenmaier has appealed from the judgment and decision of said district court to the supreme court of Iowa:

Now we, G. Munzenmaier, by occupation a saloon keeper, residence, Des Moines, Polk county, Iowa, and John Bennett, residence Des Moines, Polk county, Iowa, by occupation a saloon keeper, hereby undertake that the said G. Munzenmaier will pay the fine now adjudged against him, or such part thereof as the supreme court may direct, and in all respects abide the order and judgment of the supreme court on the appeal, and if he fail to perform any of
20 these conditions, that we will pay the sum of one thousand dollars to the State of Iowa.

Signed this 18th day of January, A. D. 1866.

G. MUNZENMAIER.
JOHN BENNETT.

Approved and filed January 19, 1866.

H. H. GRIFFITHS, *Clerk.*

And afterwards, to wit, on the 11th day of May, 1866, there was filed in the office of said clerk a notice of appeal in words and figures following, to wit:

Notice of appeal to clerk.

STATE OF IOWA
vs.
G. MUNZENMAIER.

To the clerk of the district court of Polk county, Iowa:

You are hereby notified that the defendant in the above-entitled cause has appealed from the judgment rendered against him at the trial of said cause in the district court of Polk county to the
21 supreme court of the State of Iowa.

You will therefore certify to the clerk of the said supreme court on or before the next session thereof, to be held in June next, a full and complete copy of the whole record in said cause.

FINCH, CLARK & RICE,
Atty's for Deft.

Service accepted May 11th, 1866.

H. H. GRIFFITHS, *Clerk.*

And afterwards, to wit, on the 19th day of May, 1866, there was filed in the office of said clerk a notice of appeal to plaintiff in words and figures following, to wit:

Notice to dist. att'y.

STATE OF IOWA
vs.
G. MUNZENMAIER.

To the district attorney of the 5th judicial district:

You are hereby notified that the defendant in the above-entitled

cause has appealed from the judgment rendered against him
22 at the trial of said cause in the district court of Polk county, to the supreme court of the State of Iowa, and that the same will be for hearing at the next session thereof.

FINCH, CLARK & RICE,
Attorneys for Defi.

I accept service of this notice, and waive a copy, this 17th day of May, 1866.

H. W. MAXWELL,
District Att'y of the 5th District.

23 STATE OF IOWA, *Polk County:*

I, H. H. Griffiths, clerk of the district court for said county, do hereby certify that the above and foregoing is a full, true, and complete transcript of the cause wherein the State of Iowa was the plaintiff, and G. Munzenmaier was the defendant, as full, true, and complete, as the same appears of record in my office.

Witness my hand and the seal of said court, this 19th day of May, 1866.

[L. S.] H. H. GRIFFITHS, *Clerk.*

[U. S. rev., 5 cts.]

District court costs	$49 20
2 transcripts	10 00
2 certificates	1 10
	61 30

24 Be it remembered, that at a supreme court of the State of Iowa, begun and held at the city of Des Moines, on Thursday, the 14th day of June, A. D. 1866—

Present: Hon. Ralph P. Lowe, chief justice; Hon's Jno. F. Dillon, C. C. Cole, Geo. G. Wright, judges—

The following was entered of record, to wit:

THE STATE OF IOWA
against
G. MUNZENMAIER, app'l't. } 2,484. Appeal from Polk co.

This day this cause coming on for hearing, was submitted to the consideration of the court.

And afterwards, to wit, on the 16th day of June, the following was entered of record, to wit:

THE STATE OF IOWA
against
G. MUNZENMAIER, app'l't. } 2,484. Appeal from Polk co.

This cause, having been submitted to the consideration of the court, and the court being now sufficiently advised in the premises,

find that there is no error in the judgment and proceedings of
25 the court below, and file their written opinion:

It is, therefore, considered by the court that the judgment of the court below be affirmed, and that the State of Iowa have and recover of and from the appellant, G. Munzenmaier, the sum of five hundred dollars as a fine, together with the costs of the court below taxed at $. , and the costs of this court taxed at $, and that execution issue therefor, and that he stand committed to the county jail of Polk county until said fine and costs are fully paid, and a certified copy of this judgment shall be furnished the sheriff of Polk county by the clerk of this court, which shall be his sufficient warrant to arrest and commit the said C. Munzenmaier to the jail of Polk county, and stand so committed in accordance with this judgment; and the said G. Munzenmaier being three times called, comes not, but makes default.

It is, therefore, further ordered and adjudged that default be entered in favor of the State of Iowa, and against G. Munzenmaier, and the undertaking of John Bennett, the bail, in this case, is forfeited.

26 And afterwards, to wit, on the 21st day of June, 1866, the following was entered of record, to wit:

THE STATE OF IOWA *against* G. MUNZENMAIER, app'l't. } 2,484. Appeal from Polk co.

In this case the court order, that if an appeal is taken to the Supreme Court of the United States, that the bail be in the sum of 1,000 dollars, to be approved by the clerk of this court.

27 THE STATE OF IOWA, *Supreme Court:*

I, Lewis Kinsey, clerk of the supreme court of Iowa, do hereby certify that the foregoing pages, from 24 to 26 inclusive, contain all the journal entries in said cause, in the supreme court of Iowa, as full, true, and complete as the same appears of record in said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Des Moines, this 16th day of November, A. D. 1866.

[L. S.] LEWIS KINSEY, *Clerk.*

[5-ct. rev. stamp, cancelled.]

28 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the supreme court of the State of Iowa, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said supreme court of the State of Iowa before you, between the State of Iowa and G. Munzenmaier, manifest error hath happened to the great damage of the said G. Munzenmaier, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and

speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday in December next, in said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United
29 States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this fourth day of December, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States the 89th.

[L. S.] W. G. WOODWARD,
Clerk of the United States Circuit Court
for the District of Iowa.

[50c. in. rev. stamp, cancelled.]

The within writ of error allowed this 25th day of June, 1866.

R. P. LOWE,
Chief Justice of the Supreme Court of the State of Iowa.

Filed June 25, '66.

L. KINSEY, *Cl'k.*

30 Supreme Court of the State of Iowa.

THE STATE OF IOWA
vs.
GOTLEIB MUNZENMAIER.

I, the undersigned, chief justice of the supreme court of the State of Iowa, do hereby certify that in the above-entitled cause, and upon the hearing and decision thereof in this court, there was drawn in question the validity of the statute of the State of Iowa entitled "An act for the suppression of intemperance," passed by the general assembly of said State, and which took effect July 1, 1855, and especially the validity of the 8th section of said act, on the ground that said act, and especially the 8th section thereof, were repugnant to and in conflict with the Constitution and laws of the United States, and that the decision of this court was in favor of the validity of said statute, and of the 8th section thereof.

And I do further certify that in the above-entitled cause, and on the hearing and decision thereof in this court, there was drawn in question the validity of the right, privilege, and authority of the defendant, Gotleib Munzenmaier, to keep intoxicating liquors, either imported or domestic, with intent to sell the same under a license granted to him by the government of the United States, pursuant to and in compliance with the provisions of the act of Congress entitled

"An act to provide internal revenue to support the government, and to pay interest on the public debt," approved July 1, 1862, and the acts amendatory thereof; and that the decision of this court was against the validity of such right, privilege, or authority under such license.

31

And I further certify that the said supreme court of the State of Iowa have ordered this certificate to be made a part of the record in the above-entitled cause.

In witness whereof I have hereto set my hand and caused the seal of the supreme court of the State of Iowa to be affixed at Des Moines, in said State, this 26th day of June, 1866.

[L. S.] R. P. LOWE,
Chief Justice of the Supreme Court of the State of Iowa.

Filed June 26th, 1866.

L. KINSEY, *C'k.*

32

State of Iowa, supreme court.

I, Lewis Kinsey, clerk of the supreme court of Iowa, do hereby certify that the foregoing pages contain a full, true, and complete copy of the transcript in the cause entitled the State of Iowa against G. Munzenmaier, filed in the supreme court aforesaid, as full, true, and complete as the same now remains on file in said court. I further certify that I have attached hereunto the original writ of error in said cause directed to the judges of the supreme court of Iowa, and also the certificate of the chief justice of said court.

In witness whereof I have hereunto set my hand and affixed the seal of said court at Des Moines, the 26th day of October, A. D. 1866.

[L. S.] LEWIS KINSEY, *Clerk.*

[5 ct. in. rev. stamp, cancelled.]

33

UNITED STATES OF AMERICA:

To the State of Iowa, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, in the district of Columbia, on the first Monday in December next, pursuant to a writ of error filed in the office of the clerk of the supreme court of the State of Iowa, wherein G. Munzenmaier is plaintiff and you are defendant in error, to show cause, if any there be, why judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Ralph P. Lowe, chief justice of the supreme court of the State of Iowa, this 26th day of October, in the year of our Lord 1866.

R. P. LOWE,
Chief Justice of the Supreme Court of the State of Iowa.

34 STATE OF IOWA, *Polk County:*

I, J. M. Walker, being duly sworn, do depose and say that I am United States marshal for the district of Iowa, that the within citation came into my hands on the 27th day of October, 1866, and that I served the same by reading the same to W. M. Stone, governor of the State of Iowa, and delivering to him a true copy of the same at Knoxville, Iowa, on the 29th day of October, and by reading the same to F. E. Bissell, att'y gen'l of said State at Dubuque, in said State, on the 1st day of November, 1866, and at the respected times of such service, I did exhibit to gov. and att'y gen'l the original hereof.

J. M. WALKER,
U. S. Marshal, District of Iowa.

Subscribed and sworn to by J. M. Walker, before me, on this 1st day of November, A. D. 1866.

[L. S]

JOHN D. RIVES,
Notary Public, Polk Co., Iowa.

Marshal's fees:

Milage	$18 42
Service	4 00
	22 42